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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/023,297
Filing Date: December 17, 2001
Appellant(s): VIJAY, SHARADHA

John E. Harrity
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 1, 2007 appealing from the Office action mailed July 18, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

The 35USC 102(a) Rejection of claim 85 over Ulrich (USP 6,895,438) is withdrawn by the Examiner in this Examiner's Answer. The 35 USC 103(a) Rejection of claims 1-44 and 85 is maintained.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,980,526	Jang et al.	12-2005
6,895,438	Ulrich	5-2005

(9) Grounds of Rejection

The rejection of claim 85 under 35 U.S.C. 102(a) as being clearly anticipated by Ulrich is withdrawn.

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-44 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jang (USP 6,980,526) in view of Ulrich (USP 6,895,438).

Appellants' claimed invention is to generate a record in response to a call event and to store the generated record in a section of an XML file created earlier.

Jang teaches:

Claims 1 and 85

A method comprising:

creating an XML call event file (**Jang teaches recording calls** in col.11/lines 6-8; and col.11/lines 12-19; since Jang teaches recording call events in a file, **creating event file** therefore is inherent because one can not record event in a file without creating the file first) including a server information section, at least one SIP (in column 8/line 45, claim 14, column 7/lines 38-40 and column 5/lines 29-31, **Jang teaches SIP calls**) message section (since Jang teaches recording SIP call events in a section, the section in Jang that records the SIP call event therefore is a SIP message section), and at least one call event section (in column11/lines 12-19, **Jang teaches** recording different categories, such as length of call, parties on the call and bandwidth etc., of a call event in **different sections**);

generating at least one call event record (Jang teaches in column 11/ lines 6-8 and lines 12-19 that call information or event is generated and recorded) in response to at least one event; and

storing the at least one call event record in either the at least one SIP message section, or the at least one call event section (as discussed above, in column 11/lines 6-8 and lines 12-19 Jang teaches storing call event record of different categories in different sections of a file).

Jung did not teach whether the call events are recorded in XML document. Ulrich teaches recording call events (see "records of incoming calls" in line 18 of column 3 and "record-in this instance, a phone call" in line 13 of column 8 in Ulrich). Ulrich further teaches that the record can be in XML format (see XML in the last paragraph of column 15). In column 15/lines 48-50, Ulrich teaches benefit of document being in XML format. From the teaching of Ulrich, it would have been obvious to a person or ordinary skill in the art to record Jang's SIP call events in XML document to facilitate business transactions and communication as suggested by Ulrich (line 50 column 15).

Claim 26

A tangible computer readable medium storing a plurality of modules (Figure 5) for directing a Session Initiation Protocol (SIP) server computer (the server of service provider 14 and the server of service provider 114 of Figure 1 which execute the modules shown in Figure 5 and described in column 10 line 31 to column 11 line16 and module 522 for recording events as described in column 11/lines 12-19) to function in a specified manner, the plurality of modules comprising:

a SIP application layer software module (column 5/lines 29-32), the SIP application layer software module being executable by the SIP server computer to provide SIP functionality;

a call event record module coupled to the SIP application layer software module, the call event record module being configured to create at least one call event record (**Jang teaches recording call events** in col.11/lines6-8 and col.11/lines 12-19; since

Jang teaches recording call events, **creating call event records** therefore is inherent because one can not record call event without creating the records of the events first) in response to at least one event ; and

an XML processor module (it is noted that a processor module as recited is not a processor but merely a software module executable by a processor for performing a function, in this case to create an XML call event file for storing the call event records created in the previous step. Jang teaches module 522 of Figure 5 described in column 11/lines 12-19 for recording call event records. Creating file for storing records is inherent in storing records because one can not store records in a file without creating a file first) coupled to the call event record module, the XML processor module being configured to create an XML call event file, the XML call event file including the at least one call event record.

Jung did not teach whether the call events are recorded in XML document. Ulrich teaches recording call events (see "records of incoming calls" in line 18 of column 3 and "record-in this instance, a phone call" in line 13 of column 8 in Ulrich). Ulrich further teaches that the record can be in XML format (see XML in the last paragraph of column 15). In column 15/lines 48-50, Ulrich teaches benefit of document being in XML format. From the teaching of Ulrich, it would have been obvious to a person or ordinary skill in the art to record Jang's SIP call events in XML document to facilitate business transactions and communication as suggested by Ulrich (line 50 column 15).

Claims 2-6, 9, 27, 28

Each of claims 2-6, 9, 27 and 28 gives a different label, such as telecommunication, management or proxy/redirect server, to the device that performs the method steps of parent claim 1. The method as recited is solely for recording call event and is not related to any telecommunication, management, proxy or redirect functions. Claims 2-6, 9, 27 and 28 therefore merely consist of nonfunctional descriptive material. Further, the devices in Jang are telecommunication devices and the system in Jang is a telecommunication system (column 4/lines 59-65).

Claims 7,

Jang teaches that his system includes a database (see 404 in Figure 4B and column 10/lines 6-30).

Claims 8,

The system of Jang is a LAN (column 2/line26).

Claims 10-25, 29-44

Claims 10-25 and 29-44 recite the data items stored in the created file are of different types. Jang teaches the same in column11/lines 12-19 except that the data types are not identical as claimed. It would have been obvious to a person of ordinary skill in the art to store all different types of data items so that the record is complete. It would have been further obvious to a person of ordinary skill in the art to store different types of data items in different types of sections or fields of the file and to label them appropriately so that the records are clear, accurate and organized.

Further, the claims do not recite steps or means for generating the data items of different types and steps or means for using those data items for performing any inventive operations, the recitations of claims 10-25 and 29-44 amount to labeling the data items stored in the file.

(10) Response to Argument

Claim 1, arguments

Appellants rely solely on the feature of "creating an XML call event file including a server information section, at least one SIP message section, and at least one call event section" for patentability (second last paragraph on page 9 of the brief). The feature has the following three limitations: 1. creating a call event file, 2. the call event file is in XML format, 3. the created file has three labeled sections and one of them is labeled as SIP message section. There are no patentability arguments directed to generating and storing records (the last and second last paragraphs of claim 1).

For the first limitation: creating a call event file, as set forth in the §103 Rejection above, Jang teaches storing call records of call events in a file (column 11/lines 6-8). Since Jang teaches storing call records of call events in a file, creating event file therefore is inherent because one can not record event in a file without creating the file first.

For the second limitation: the call event file is in XML format, the Examiner relies on Ulrich solely for that teaching. As set forth in the rejection above, Ulrich also teaches recording call events (see "records of incoming calls" in line 18 of column 3 and

"record-in this instance, a phone call" in line 13 of column 8 in Ulrich). Ulrich further teaches that the record can be in XML format (see XML in the last paragraph of column 15). In column 15/lines 48-50, Ulrich teaches the benefit of document being in XML format. From the teaching of Ulrich and since both references teach recording call events, it would have been obvious to a person or ordinary skill in the art to record Jang's SIP call events in XML document to facilitate business transactions and communication as suggested by Ulrich (line 50 column 15).

For the third limitation: the created file has three labeled sections and one of them is labeled as SIP message section, Jang teaches, in column11/lines 12-19, recording different categories (such as length of call, parties on the call and bandwidth etc., of a call event) in different sections. As to the SIP limitation, Jang teaches SIP calls in column 8/line 45, claim 14, column 7/lines 38-40 and column 5/lines 29-3. Since the calls in Jang are SIP calls, the messages in any section therefore are SIP messages and the sections which store SIP message are SIP message section.

Claim 1 further recites in the last paragraph that the call event record is stored in only one of the three sections and that it can be stored in any one of the three sections. The recitations evidence that the labels of the sections are arbitrary and the given names of the sections are nothing more than labels.

In the second last paragraph on page 9 of the brief, Appellants stated " the Examiner appears to admit that Jang does not disclose this feature and relies on Ulrich for allegedly disclosing the above feature of claim 1". On the contrary, the Examiner submits that Jang teaches all the features of claim1 including creating call event file

except for the file being an XML file. The Examiner relies on Ulrich solely for the teaching of a file in XML format.

As to motivation to combine, Appellants do not dispute that Ulrich recognizes the benefits of a file being in XML format. Appellants fail to provide arguments as to why it is not obvious to a person of ordinary skill in the art to store the call records of Jang in XML format so as to recognize the benefits as motivated by Ulrich.

In the arguments directed to claim 1, Appellants appear do not disagree with the Examiner on the teaching of Jang and Ulrich. Appellants appear to argue that Jang and Ulrich do not have what the other has. It is well established that in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Claim 26 arguments

Similar to the Appellants' arguments directed to claim 1, Appellants rely solely on the recitation "an XML processor module coupled to the call event record module, the XML processor module being configured to create an XML call event file, the XML call event file including the at least one call event record" for patentability (second paragraph on page 35 of the brief). There are no patentability arguments directed to the remaining features of SIP application layer software module and call event record module.

In the discussion directed to claim 1 above, the Examiner has established that Jang and Ulrich together teach creating an XML call event file and the XML call event file includes the at least one call event record. Therefore, as conceded and evidenced by lack of Appellants' arguments, and together with the Examiner's arguments set forth above, the applied references teach SIP application layer software module and call event record module. The only remaining issues are 1. whether the applied references has an XML processor module and 2. whether the processor module couples to the call event record module.

Jang teaches an XML processor module. At the outset, it is noted that the modules recited in claim 26 are not hardware. They are software modules stored in a readable medium (see preamble). The recitation "XML processor module" therefore is not directed to a configured processor but to a software module for controlling a processor to perform a function. It is well know and Jang teaches that the "videoconferencing services switch" shown in Figure 3 is controlled by processors. Since Jang's videoconferencing services switch is for creating call event file and for storing call event record in the file, Jang when improved by Ulrich has an XML processor module in his program (XML is taught by Ulrich).

Jang teaches that his XML processor module is coupled to a call event record module. It is noted that the call event record module is also a software module and not a piece of hardware. It is well known that all modules are integrated into a program and stored in a memory for controlling a processor. It is further well known that all modules in a program are capable of interacting and referencing with each other in performing a

job, in this case, creating file and recording call events in the file. The modules in Jang or Ulrich are therefore coupled together.

In the second last paragraph on page 35 of the brief, Appellants stated " the Examiner appears to admit that Jang does not disclose this feature and relies on Ulrich for allegedly disclosing the above feature of claim 1" (Appellants probably meant claim 26). On the contrary, the Examiner submits that Jang teaches all the features of claim 26 except for the file being an XML file. The Examiner relies on Ulrich solely for the teaching of a file in XML format.

As to motivation to combine, Appellants do not dispute that Ulrich the benefits of a file being in XML format. Appellants fail to provide arguments as to why it is not obvious to a person of ordinary skill in the art to store the call records of Jang in XML format so as to recognize the benefits as motivated by Ulrich.

In the arguments directed to claim 26, Appellants appear do not disagree with the Examiner on the teaching of Jang and Ulrich. Appellants appear to argue that Jang and Ulrich do not have what the other has. It is well established that in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Claim 85 arguments

Similar to claim 26, claim 28 is directed to a readable medium for storing software modules. Similar to claim 1, Appellants rely solely on the recitation: "creating

an XML call event file including the at least one call event record that is generated in response to at least one event" for patentability. There are no patentability arguments provided by Appellants on the rest of the recitations. It is further noted that independent claim 85 is broader than both independent claims 1 and 26. Therefore, reference is made to the Examiner's arguments above for the rebuttal of Appellants' arguments directed to claim 85.

In the first full paragraph on page 53 of the brief, Appellants stated " the Examiner appears to admit that Jang does not disclose this feature and relies on Ulrich for allegedly disclosing the above feature of claim 85". On the contrary, the Examiner submits that Jang teaches all the features of claim 85 except for the file being an XML file. The Examiner relies on Ulrich solely for the teaching of a file in XML format.

As to motivation to combine, Appellants do not dispute that Ulrich recognizes the benefits of a file being in XML format. Appellants fail to provide arguments as to why it is not obvious to a person of ordinary skill in the art to store the call records of Jang in XML format so as to recognize the benefits as motivated by Ulrich.

In the arguments directed to claim 85, Appellants appear do not disagree with the Examiner on the teaching of Jang and Ulrich. Appellants appear to argue that Jang and Ulrich do not have what the other has. It is well established that in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Claims 2-6, 9, 27, 28 arguments

Appellants allege that claims 2-6, 9, 27 and 28 do not merely recite labels. The Examiner disagrees. Each of claims 2-6, 9, 27 and 28 recites no further steps or further limitations except to give a different label, such as telecommunication, management or proxy/redirect server, to the device that performs the method steps of parent claims 1 or 26. The method as recited in parent independent claims is solely for recording call event and is not related to any telecommunication, management, proxy or redirect functions. Claims 2-6, 9, 27 and 28 therefore merely consist of nonfunctional descriptive material, do not further limit their parent claims in substance but only to give a label to the device. Further, the devices in Jang are telecommunication devices and the system in Jang is a telecommunication system (column 4/lines 59-65).

Appellants fail to provide arguments as to why claims 2-6, 9, 27 and 28 are patentable distinct over the applied references. Merely arguing the difference in naming the device is not sufficient.

Claims 7 arguments

Appellants argue that Jang and Ulrich do not teach database. the Examiner disagrees. Jang clearly teaches that his system includes a database (see 404 in Figure 4B and column 10/lines 6-30).

Claims 8 arguments

Appellants argue that Jang and Ulrich do not teach a LAN. The Examiner disagrees. Jang clearly teaches that his system includes a LAN. The system of Jang is a LAN system (column 2/line26).

Claims 10-25, 29-44 arguments

Claims 10-25 and 29-44 recite that the events and the data items stored in the created file are of different types. Jang teaches the same in column11/lines 12-19 except that the data types are not identical as claimed. It would have been obvious to a person of ordinary skill in the art to store all different types of events and different types of data items so that the record is complete. It would have been further obvious to a person of ordinary skill in the art to store different types of data items in different types of sections or fields of the file and to label them appropriately so that the records are clear, accurate and organized.

Further, the claims do not recite steps or means for generating the data items of different types and steps or means for using those data items of different types for performing any inventive operations. In the absent of Appellants' patentability arguments as to why the recitations of claims 10-25 and 29-44 are patentable distinct, the recitations of claims 10-25 and 29-44 amount to labeling the data items stored in the file.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Conclusion

For the above reasons, it is respectfully requested that the rejection be sustained.

Respectfully submitted,

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